

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

FLAMINGO LLC,

Plaintiff

v.

WENDY'S OLD FASHIONED
HAMBURGERS OF NEW YORK, INC.,
Successor-In-Interest to Wenco Food Systems
Corp.,
26 E. 23rd Street
New York, New York 10010

Defendant.

Case No. 11-cv-4862 (CM) (JCF)

**AFFIDAVIT OF
JACQUELINE G. YECIES
IN SUPPORT OF
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JACQUELINE G. YECIES, hereby swears as follows:

1. I am an Associate at Akin Gump Strauss Hauer & Feld LLP, counsel for defendant Wendy's Old Fashioned Hamburgers of New York, Inc. ("Wendy's" or "Defendant") in this action. I have attended all of the depositions and am familiar with the documents produced in this action.
2. I submit this Affidavit in support of Wendy's Motion for Summary Judgment.
3. A true and correct copy of excerpts from the deposition transcript of Abe Shrem, dated December 16, 2011 and December 19, 2011, ("Shrem Dep.") is attached as Exhibit A.
4. A true and correct copy of excerpts from the deposition transcript of Ira Shapiro, dated January 12, 2012, ("Shapiro Dep.") is attached as Exhibit B.
5. A true and correct copy of excerpts from the deposition transcript of Michael O'Kane, dated January 19, 2012, ("O'Kane Dep.") is attached as Exhibit C.

6. A true and correct copy of excerpts from the deposition transcript of Andrew Taves, dated March 14, 2012, (“Taves Dep.”) is attached as Exhibit D.
7. A true and correct copy of the lease entered into by Wendy’s and Plaintiff Flamingo LLC (“Flamingo”), dated June 27, 1990, which was identified by Abe Shrem and Michael O’Kane at their depositions, is attached as Exhibit E.
8. A true and correct copy of an email dated October 12, 2007 from Andy Taves to Abe Shrem, forwarding an email received from Michael O’Kane, which was identified by Abe Shrem and Andrew Taves at their depositions, is attached as Exhibit F.
9. A true and correct copy of the Agreement to Terminate Lease, dated October 12, 2007, which was identified by Michael O’Kane and Ira Shapiro at their depositions, is attached as Exhibit G.
10. A true and correct copy of an email from Andy Taves to Ira Shapiro, copying Abe Shrem, Burt Dorfman, Jerome Strelov, Kris Kaffenbarger, Mike Pacella, Jude Endicott, and Michael O’Kane, dated September 27, 2007, attaching Wendy’s counter-proposal to Ira Shapiro regarding 26 East 23rd Street, which was identified by Andrew Taves at his deposition, is attached as Exhibit H.
11. A true and correct copy of an email dated November 21, 2007 from Jerome Strelov to Burt Dorfman and Michael O’Kane, copying Abe Shrem and Ira Shapiro, which was identified by Michael O’Kane at his deposition, is attached as Exhibit I.
12. A true and correct copy of the Contract of Sale, dated November 20, 2007, between Flamingo and various of Ira Shapiro’s development entities, which was identified by Abe Shrem and Ira Shapiro at their depositions, is attached as Exhibit J.
13. A true and correct copy of an email dated November 21, 2007 from Burt Dorfman to Michael

O’Kane, copying Marc Jacobs, Ira Shapiro, and Jerome Strelov, attaching a letter, dated November 21, 2007, from Burt Dorfman to Michael O’Kane, which was identified by Michael O’Kane at his deposition, is attached as Exhibit K.

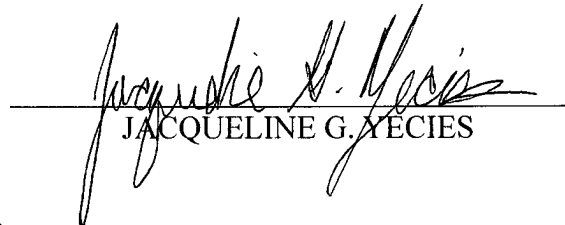
14. A true and correct copy of a letter dated January 7, 2008 from Abe Shrem to Ira Shapiro, which is a signed version of a document that was identified by Abe Shrem at his deposition, is attached as Exhibit L.
15. A true and correct copy of the First Amendment of Agreement to Terminate Lease, dated January 29, 2008, which was identified by Michael O’Kane and Ira Shapiro at their depositions, is attached as Exhibit M.
16. A true and correct copy of a letter dated January 7, 2008 from Abe Shrem to Ira Shapiro, which was identified by Abe Shrem at his deposition, is attached as Exhibit N.
17. A true and correct copy of an email chain, including an email dated January 8, 2008 from Abe Shrem to Ira Shapiro, which was identified by Abe Shrem at his deposition, is attached as Exhibit O.
18. True and correct copies of a series of adjournment agreements, dated from June 23, 2008 through December 1, 2009, which were identified by Abe Shrem at his deposition, are attached as Exhibit P.
19. A true and correct copy of a spreadsheet identifying certain payments received by Flamingo from Ira Shapiro, which was identified by Abe Shrem at his deposition, is attached as Exhibit Q.
20. A true and correct copy of a spreadsheet identifying “2008 deposits, expenses Abe/Flamingo from Ira Shapiro/Slazer Enterprises” and “Expenses & MIPP (Monthly Increase in Purchase Price) for 2009,” which was identified by Abe Shrem at his deposition, is attached as Exhibit

R.

21. A true and correct copy of a Stipulation, executed by counsel for Flamingo and Wendy's on February 28, 2012, attaching a document sent by Abe Shrem to Ira Shapiro by email on December 26, 2007, is attached as Exhibit S.
22. A true and correct copy of an email dated September 5, 2008 from Andy Taves to Abe Shrem, which was identified by Andrew Taves at his deposition, is attached as Exhibit T.
23. A true and correct copy of a Notice of Mechanic's Lien, dated February 5, 2009, which was identified by Abe Shrem at his deposition, is attached as Exhibit U.
24. A true and correct copy of a Notice of Mechanic's Lien, dated May 18, 2009, which was identified by Abe Shrem at his deposition, is attached as Exhibit V.
25. A true and correct copy of an email dated August 13, 2009 from Tom Turano to Jerome Strelov, which was identified by Abe Shrem at his deposition, is attached as Exhibit W.
26. A true and correct copy of a facsimile, dated June 18, 2009, which was identified by Abe Shrem at his deposition as a document that he received, is attached as Exhibit X.
27. A true and correct copy of a letter dated March 15, 2010 from Jerome Strelov to Ira Shapiro, copying Abe Shrem and Burt Dorfman, which was identified by Abe Shrem at his deposition, is attached as Exhibit Y.
28. A true and correct copy of a letter dated June 18, 2010 from Brian Maas to Michael O'Kane, which was identified by Abe Shrem at his deposition, is attached as Exhibit Z.

Sworn before me this 27th day
of April 2012.


Notary Public


JACQUELINE G. VECIES

MELISSA ANNE RUDKO
Notary Public, State of New York
No. 01RU6218106
Qualified in New York County
Commission Expires May 24, 2014